

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In Re:

Residential Capital, LLC, et al.

Debtor(s)

APPLICATION FOR RELIEF
FROM THE AUTOMATIC STAY

Chapter 11

Bankruptcy Case: 12-12020

Hearing Date: 05/30/2013 @ 10:00
AM

Judge Martin Glenn

***Application of HSBC Mortgage Services, Inc., (hereinafter also referred to as “HOUSEHOLD”)
For Relief from the Automatic Stay under 11 U.S.C. UNDER §362(d) (and 11 USC §1301) With
Respect to Property: 1333 Wilging Drive, Mansfield, OH 44907. (the “Property”)***

HSBC Mortgage Services, Inc., through its Counsel, Stern & Eisenberg PC, respectfully requests the Court grant its Application/Motion for Relief with regard to the Property and in support thereof respectfully represents as follows:

1. Movant is HSBC Mortgage Services, Inc., with a place of business located at 2929 Walden Avenue, Depew, NY 14043.
2. Borrower(s) are David Lynn Payne and Karen Dee Payne (hereinafter “Borrower(s)”), adult individuals whose last-known address is 1333 Wilging Drive, Mansfield, OH 44907.
3. On 07/26/2006, Borrower(s) signed a note and mortgage in the principal sum of \$130,000.00, evidencing a loan from MERS, Inc., as Nominee for M&I Bank, FSB, in the same amount, secured by the Property, as evidenced by a mortgage duly recorded at the Recorder of Deeds for Richland County on 08/03/2006 as Document# 200600013391 and in Book# 1671 and Page# 219. A copy of the note and mortgage is attached as Exhibit “A” and hereby incorporated by reference.
4. The mortgage was ultimately assigned to HSBC Mortgage Services, Inc., as evidenced by an assignment of mortgage duly recorded at the Recorder of Deeds for Richland County on 01/27/2010 as Document # 201000000828 and in Book# 1958 and Page# 108. A copy of the recorded assignment of mortgage is attached as Exhibit “B” and hereby incorporated by reference.
5. Debtor, Residential Capital, LLC (et. al.), through an assignment of mortgage, is the current holder of a lien dated 07/26/2006 and filed on 08/03/2006 as Document# 2006070134A and Book# 1671 and Page# 0237 in the amount of \$32,500.00 representing a junior lien in the property. A copy of the recorded mortgage and assignment of mortgage is collectively attached as Exhibit “C” and hereby incorporated by reference.

6. HSBC Mortgage Services, In., instituted foreclosure proceedings with counsel, Reimer, Arnovitz, Cherek & Jeffrey Co., L.P.A., providing representation in Ohio.
7. Thereafter, as a result of the Debtor's bankruptcy, HSBC Mortgage Services Inc.'s proceeding was stayed since Debtor holds a junior lien interest in the Property.
8. Debtor filed the instant Chapter 11 Bankruptcy on Monday, May 14, 2012 and as a result, any State Court proceedings were stayed.
9. It is believed and therefore averred that Debtor(s) filed the instant bankruptcy to address concerns other than the enforcement of HSBC Mortgage Services Inc.'s senior lien in the Property, notwithstanding, the automatic stay applies.
10. HSBC Mortgage Services Inc., holds a mortgage in the original principal amount of \$130,000.00 for which there is a current balance of \$124,422.46 with arrears due in excess of \$34,211.89.
11. In addition, HSBC Mortgage Services Inc., has incurred counsel fees and costs in association with Debtor(s)' default and this motion for \$826.00 plus any additional fees incurred.
12. Debtor has not, to this date, taken any position with the foreclosure on the Property.
13. A copy of the proposed Order seeking relief is attached as Exhibit "D" and hereby incorporated by reference.
14. No such prior application has been made.
15. Movant requests that the stay of Bankruptcy Rule 4001 (a)(3) and the requirements of Rule 3002.1 be waived.

WHEREFORE, Movant, HSBC Mortgage Services Inc., respectfully requests this Court to grant the appropriate relief under 11 U.S.C. §362 (and 11 USC §1301) from the automatic stay as set forth in the proposed order together with such other relief as deemed just and appropriate.

STERN & EISENBERG, PC

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